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Nos. 73-406, 73-1016, 73-1095, and 73-5650

In the Supreme Court of the United States

OCTOBER TERM, 1973

KEVIN BURNS, COMMISSIONER, STATE OF IOWA, DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONERS

v.

JANE DOE, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JENNIFER, ET AL.

JOHN LASCARIS, INDIVIDUALLY AND AS COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE COUNTY OF ONONDAGA, APPELLANT

v.

SYLVIA SHIRLEY, INDIVIDUALLY AND ON BEHALF OF HER MINOR DEPENDENT CHILDREN, TAMMY LYNN AND LISA MARIE, ET AL.

ABE LAVINE, INDIVIDUALLY AND AS COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF NEW YORK, APPELLANT

v.

SYLVIA SHIRLEY, INDIVIDUALLY AND ON BEHALF OF HER MINOR DEPENDENT CHILDREN, TAMMY LYNN AND LISA MARIE, ET AL.

JANE DOE, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JENNIFER, ET AL., PETITIONERS

v.

KEVIN BURNS, COMMISSIONER, STATE OF IOWA, DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-406

KEVIN BURNS, COMMISSIONER, STATE OF IOWA DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONERS

v.

JANE DOE, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JENNIFER, ET AL.

No. 73-1016

JOHN LASCARIS, INDIVIDUALLY AND AS COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE COUNTY OF ONONDAGA, APPELLANT

v.

SYLVIA SHIRLEY, INDIVIDUALLY AND ON BEHALF OF HER MINOR DEPENDENT CHILDREN, TAMMY LYNN AND LISA MARIE, ET AL.

No. 73-1095

ABE LAVINE, INDIVIDUALLY AND AS COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF NEW YORK, APPELLANT

v.

SYLVIA SHIRLEY, INDIVIDUALLY AND ON BEHALF OF HER MINOR DEPENDENT CHILDREN, TAMMY LYNN AND LISA MARIE, ET AL.

547-292—74——1

No. 73–5650

JANE DOE, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JENNIFER, ET AL., PETITIONERS

v.

KEVIN BURNS, COMMISSIONER, STATE OF IOWA, DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's orders of December 10, 1973 and March 4, 1974 inviting the Solicitor General to express the views of the United States in these cases. The cases generally present the question whether, consistently with the Social Security Act, a state may require a parent to cooperate in securing support for a child from persons liable for such support as a condition of the parent's (but not the child's) receipt of Aid to Families with Dependent Children ("AFDC").

STATEMENT

Nos. 73–406 and 73–5650 involve an Iowa statute (Iowa Code Ann. § 239.5) which requires that, to be eligible for AFDC, a parent must cooperate in "efforts to obtain support money" for her children. The Court of Appeals for the Eighth Circuit affirmed a district court holding that the Iowa statute violated

the Social Security Act. The appellate court modified the district court decision to eliminate a provision for retroactive payment of AFDC benefits to persons who had been denied benefits because of the Iowa statute, and thus found it unnecessary to decide whether the Eleventh Amendment barred such retroactive payments.[1]

The other cases (Nos. 73–1016 and 73–1095) are direct appeals from a decision by a three-judge district court in the Northern District of New York declaring Section 101–a of the New York Social Services Law invalid "insofar as it makes recipient cooperation in a paternity or support action against an absent parent a condition of eligibility for AFDC" (Lascaris J. S. App. 10a).

The courts invalidated both the Iowa and the New York provisions on the ground that they impermissibly imposed an eligibility requirement in addition to those provided in the Social Security Act, 42 U.S.C. 601, *et seq.* (Lavine J. S. 24–25; Burns Pet. App. 2a).

DISCUSSION

These cases present an important question in the administration of the Social Security Act which the United States believes this Court should review. The issue is whether the Social Security Act permits states to require, as a condition of a parent receiving AFDC

[1] No. 73–5650 and Question II in No. 73–406 concern the effect of the Eleventh Amendment on suits for retroactive state welfare payments. We express no views on these questions, which may have been settled by this Court's decision in *Edelman* v. *Jordan*, No. 72–1410, decided March 25, 1974.

benefits, that the parent cooperate in determining the paternity of, or securing support for, his or her child. The Department of Health, Education, and Welfare has advised us that ten states (which include Iowa and New York), containing more than one-third of AFDC recipients, require such parental cooperation as a condition of their AFDC eligibility.[2] We submit that the Social Security Act permits the imposition of such conditions, both because the conditions do not conflict with any part of the Act and because they further the purposes of the federal program.

The Social Security Act contains a number of provisions indicating Congress' continuing concern that absent parents should support AFDC children. 42 U.S.C. 602(a)(17)(A) requires each state to implement a program:

> (i) * * * to establish the paternity of such child and secure support for him, and
>
> (ii) in the case of any child * * * who has been deserted or abandoned by his parent, to secure support for such child from such parent

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[2] The Secretary of Health, Education, and Welfare has issued a regulation, 45 C.F.R. 233.90(b)(4) (38 Fed. Reg. 10940), indicating that states can deny aid to a non-cooperating parent or caretaker, though not to such person's child. The regulation states: "A child may not be denied AFDC * * * because a parent or caretaker relative fails to assist: (i) In the establishment of paternity of a child born out of wedlock; or (ii) in seeking support from a person having a legal duty to support the child * * * neither this nor any other provision of these regulations should be construed to require that provision be made by a State in its AFDC program for the maintenance of a parent or caretaker who fails to provide such assistance and AFDC may be denied with respect to such parent or caretaker."

> * * * utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support * * *.

Section 602(a)(17)(B) requires that there be a special administrative unit in each state to establish paternity and obtain support, and Section 602(a)(18) requires states to enter into agreements with law enforcement and judicial agencies to help them in this task. Sections 602(a) (21) and (22) require states to provide information useful in locating deserting parents and to assist each other in obtaining and enforcing support obligations of such parents.

This Court has upheld the validity of state provisions making AFDC eligibility conditional on the parent's taking certain actions in furtherance of the aims of the Social Security Act. In *Wyman* v. *James*, 400 U.S. 309, a New York State requirement that welfare applicants and recipients allow AFDC caseworkers to visit their homes was upheld against a challenge based primarily upon the claim that such visits violated the applicants' and recipients' Fourth Amendment rights. The Court noted that a home visit, though not specifically required by the Act, is a key vehicle of welfare administration, and that a visit was especially important in light of the congressional intent that increased social services be provided (*id.* at 319–320). The Court also noted a number of other federal policies which a home visit might further, such as assessment of the income and resources of the family and prevention of the abuse of the child or misuse of payments made on its behalf (*id.* at 315–

316). The Court "conclude[d] that the home visitation as structured by the New York statutes and regulations is a reasonable administrative tool" and "that it serves a valid and proper administrative purpose for the dispensation of the AFDC program" (*id.* at 326).

Similarly, the State regulations here challenged also are a reasonable administrative tool for accomplishing the statutory objective of establishing the paternity of and obtaining support for AFDC children. Without the cooperation of the other parent, it would often be impossible for the State to achieve those objectives. Indeed, the State regulations here involved are less severe than the home visit regulation upheld in *James*, since non-compliance with the latter resulted in depriving both parent and child of aid, whereas the requirement here terminates only the payment for the parent, but not for the child.[3]

In the most recent case dealing with a state imposed

[3] In *Juras* v. *Meyers*, 404 U.S. 803, *Weaver* v. *Doe*, 404 U.S. 987, and *Carleson* v. *Taylor*, 404 U.S. 980, this Court summarily affirmed the action of three-judge district courts striking down state requirements comparable to those at issue here which denied aid both to the non-cooperating parent and to the dependent child. Each of the district courts took particular notice of Congress' intention that aid should not lightly be denied to the dependent child. *Meyers* v. *Juras*, 327 F. Supp. 759, 762 (D. Ore.); *Doe* v. *Swank*, 332 F. Supp. 61, 63 (N.D Ill.); *Taylor* v. *Martin*, 330 F. Supp. 85, 89 (N.D. Cal.) Unlike the requirements in the above cases, which excluded otherwise eligible children from the AFDC program, the conditions here at issue are designed to effectuate specific policies and provisions of the Act while not undermining the primary purpose of the AFDC program—aid to needy children.

eligibility requirement under AFDC, *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, this Court held that the federal work incentive program did not pre-empt a New York requirement that, in order to maintain eligibility for AFDC payments, certain employable individuals must comply with a program designed to secure work for them. The Court noted that the state requirements did not conflict with federal requirements and concluded (*id.* at 421):

> Where coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for federal pre-emption becomes a less persuasive one.

The Court stated that in the case of work requirements, "the Act allows for complementary state work incentive programs and procedures incident thereto—even if they become conditions for continued assistance. Such programs and procedures are not necessarily invalid, any more than other supplementary regulations promulgated within the legitimate sphere of state administration [citing *Wyman* v. *James, supra*]" (*id.* at 422).

Just as the Act "allows for" state work incentive programs and work-related eligibility requirements, the Act also "allows for" state programs and eligibility requirements designed to further and complement the federal policy of obtaining support for AFDC children from those legally required to support them. " '[S]o long as the State's actions are not in violation of any specific

provision of the Constitution or the Social Security Act, the courts may not void them" (*id.* at 423, n. 29).

The Court distinguished cases holding that any state additional eligibility condition violates the requirement in 42 U.S.C. 602(a)(10) that aid be furnished "to all eligible individuals" on the ground that those cases involved requirements where there was "no room either in the Act's language or legislative history to warrant the State's additional eligibility requirements" (*id.* at 421–422).

In those cases, *King* v. *Smith*, 392 U.S. 309, *Townsend* v. *Swank*, 404 U.S. 282, and *Carleson* v. *Remillard*, 406 U.S. 598, the state eligibility standards in issue varied from the federal standards contained in the Act, 42 U.S.C. 606(a) (see *Townsend* v. *Swank*, *supra*, 404 U.S. at 286; *Jefferson* v. *Hackney*, 406 U.S. 535, 545), and thus operated to exclude from the AFDC program one or more groups which Congress has defined as "dependent children." Thus in *King* v. *Smith*, the state standard defined "parent" in a manner inconsistent with the term as Congress had intended it, thereby excluding from its AFDC program a group covered by the Act. In *Townsend* v. *Swank*, the state denied AFDC benefits to a group of dependent children between the ages of 18 and 21 who attended college or a university, and limited such benefits to children who attended high school or vocational training school, even though the Social Security Act defined "dependent child" to include a child under 21 who was "a student regularly attending

a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment" (42 U.S.C. 606(a)(2)(B)). And in *Carleson* v. *Remillard*, the state excluded from AFDC benefits by means of a standard which the Court found to be inconsistent with the federal "continued absence" standard, the group of children whose parent was absent due to military service. Moreover, in none of those cases was a state attempting through the use of an eligibility standard to implement a federal welfare policy. Indeed, to the extent that the eligibility standards in *King*, *Townsend* and *Remillard* conflicted with the definitional standards set forth in the Act, they frustrated federal policy.

In the present case, the state regulations requiring a parent to cooperate in establishing paternity or obtaining support directly further a clear federal welfare policy and do not conflict with or vary from the definitional standards contained in the Act.

We submit that in "the scheme of cooperative federalism" (*King*, *supra*, 392 U.S. at 316) which is AFDC, states are not precluded from acting to secure support for children from those legally obligated to support them, even by making cooperation a condition of the parent's eligibility for welfare benefits. The validity of these requirements is an important question, both because it concerns the state discretion which is a keystone of federal welfare administration and because it affects the ability of States to implement the purposes of the Social Security Act.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted as to Question I in No. 73-406, and that probable jurisdiction should be noted in Nos. 73-1016 and 73-1095.

ROBERT H. BORK,
Solicitor General.

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